

In the United States Patent and Trademark Office

In re the application of: Palliyil	)	
	)	
Filed: 12/12/2003	)	Group Art Unit: 2439
	)	
For: Apparatus, methods and	)	Examiner: James R. Turchen
computer programs for identifying	)	
matching resources within a data	)	
processing network	)	
	)	
Appl. No.: 10/735,509	)	
	)	
Appellant's Docket:	)	
JP920030270US1	)	

REPLY BRIEF

Dear Sir:

This Reply Brief is responsive to Examiner's Answer dated January 28, 2009.

In the Appeal Brief, Appellant argued that claims 24, 31 and 38 are allowable. Appellant also contends that dependent claims 25 through 30, 32 through 37, and 39 through 44 are also allowable at least because they depend upon respective, allowable independent claims 24, 31 and 38.

In Appellant's rebuttal (Appeal Brief, first line of second full paragraph, page 10, and within brackets in second full paragraph, page 12), the Appeal Brief discusses amendments to the claims. This is erroneous. Please ignore those remarks. The Appeal Brief correctly indicates on page 2 that there are no amendments in connection with this appeal.

In Appellant's rebuttal, on page 10 of the Appeal Brief, Appellant states that Radatti "teaches away" from what is claimed. To clarify, Appellant's argument does not depend upon Radatti explicitly saying that it is bad to indicate a vulnerability unless there is more than one changed replica. Appellant's point is that Radatti explicitly

teaches something different than what is claimed in the present case. That is, Radatti teaches that even merely one difference indicates a vulnerability, whereas the claims make it clear a vulnerability is indicated only if there is more than one difference.

Appellant understands that the rejection relies upon Radatti for teaching about detecting changed replicas of a resource and relies upon Szor for teaching about indicating a vulnerability only if there is more than one notification packet. See Examiner's Answer, page 9, regarding argument two. Applicant wishes to make a point that even if Szor teaches an embodiment in which a vulnerability is indicated when there is more than one notification, it is significant that Radatti explicitly teaches something directly contrary to this. A contrary teaching of Radatti about a single changed instance weighs against the combination of Szor and Radatti, even though the rejection relies upon Szor for a particular number test, as claimed.

Further, even beyond the numerosity issue, the principle of operation of Szor must also be modified in order to combine the references, and that principle is in opposition to what is claimed. This is not addressed in the final Office action nor Examiner's Answer. See MPEP 2143.01 ("Where the teachings of two or more prior art references conflict, the examiner must weigh the power of each reference to suggest solutions to one of ordinary skill in the art, considering the degree to which one reference might accurately discredit another," citing *In re Young*, 927 F.2d 588, 18 USPQ2d 1089 (Fed. Cir. 1991)).

That is, regarding the numerosity issue, the rejection points out Szor teaches that a vulnerability is indicated by more than one notification. But the notifications taught by Szor are notifications of instances of fileless code having *matching* signatures or parameters (or both). Szor, col. 7, lines 9-48. Counting *matching* notifications is in opposition to what is claimed and to the teaching of Radatti that the rejection relies upon, i.e., that a vulnerability is indicated by an occurrence of *non-matching* instances of a file. This issue, and the failure to address this issue, further undermines the rational underpinning of the combination presented in the rejection.

REQUEST FOR ACTION

Based on the above arguments and Appellant's previously filed Appeal Brief, Appellant requests that the application be promptly passed to issuance.

Respectfully submitted,

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